

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

T. LEE NIGRO, M.D.,

Appellant,

v.

ST. JOSEPH MEDICAL CENTER and SHERYL DAVIS,

Respondents.

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**DOCKET NUMBER WD73810**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** May 1, 2012

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**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable Edith L. Messina, Judge

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**JUDGES**

Division One: Martin, P.J., and Newton and Mitchell, JJ.

CONCURRING.

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**ATTORNEYS**

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Attorney for Appellant,

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

T. LEE NIGRO, M.D.,

Appellant,

v.

ST. JOSEPH MEDICAL CENTER and  
SHERYL DAVIS,

Respondents.

OPINION FILED:  
May 1, 2012

WD73810

Jackson County

Before Division One Judges:

Cynthia L. Martin, Presiding Judge, and Thomas H.  
Newton and Karen King Mitchell, Judges

This is a breach of contract, defamation, and tortious interference case. Respondents, St. Joseph Medical Center (“St. Joseph”) and Sheryl Davis responded to a request from Blue Cross Blue Shield of Kansas City (“Blue Cross”) regarding whether Appellant, Dr. T. Lee Nigro, who formerly practiced medicine at St. Joseph, had ever been the subject of disciplinary proceedings. Respondents sent a letter to Blue Cross describing such proceedings. Nigro disputes, not that the proceedings occurred, but whether the proceedings were justified based on the underlying facts. The circuit court entered summary judgment in favor of Respondents, even though Nigro had outstanding discovery requests.

**AFFIRMED.**

**Division One holds:**

### 1. Discovery

Whether to allow (or compel) further discovery once a summary judgment motion has been filed is in the discretion of the circuit court. *State ex rel. Thomas v. Olvera*, 987 S.W.2d 373, 376 (Mo. App. E.D. 1999). A party moving for a continuance to pursue discovery may not rest on the bare assertion that further discovery *might* produce a dispute of material fact; rather, the party must set out the evidence that he seeks to obtain and must show how that evidence would create a genuine issue of material fact. *Chouteau Auto Mart, Inc. v. First Bank*, 91 S.W.3d 655, 660 (Mo. App. W.D. 2002); *Olvera*, 987 S.W.2d at 376.

Here, the court did not abuse its discretion for two reasons: (a) Nigro had the means and the time to conduct the discovery he sought without court intervention, yet he did not use them; and (b) the evidence he sought to establish was either immaterial or insufficiently definite to warrant relief under Rule 74.04(f).

## **2. Defamation**

“The elements of defamation in Missouri are: 1) publication, 2) of a defamatory statement, 3) that identifies the plaintiff, 4) that is false, 5) that is published with the requisite degree of fault, and 6) damages the plaintiff’s reputation.” *Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 70 (Mo. banc 2000). In any defamation case, the truth of the allegedly defamatory statement may be submitted as evidence, MO. CONST. art. I, § 8, and our supreme court has interpreted that to mean that the truth is an *absolute* defense to a defamation claim. *Rice*, 919 S.W.2d at 243. Thus, for the purposes of defamation, it does not matter whether a statement was made in bad faith, so long as it was true. Moreover, the test to be administered in evaluating the defense of truth is whether the challenged statement is substantially true. *Turnbull v. Herald Co.*, 459 S.W.2d 516, 519 (Mo. App. 1970).

Here, the subject statements were either true or substantially true, and therefore the circuit court did not err in granting summary judgment on Nigro’s defamation claims.

## **3. Breach of Contract and Release**

In order to prove the defense of release, defendants must show that the plaintiff intended to release them from liability for the subject conduct and that the plaintiff used clear, precise, and unequivocal language in so doing. *Ensminger v. Burton*, 805 S.W.2d 207, 217 (Mo. App. W.D. 1991).

Here, Nigro clearly, precisely, and unequivocally manifested his intention to release St. Joseph and Davis from any liability associated with responding to Blue Cross’s request, so long as any such response was made “in good faith and without malice based on a reasonable belief that the information is true.” We hold that the letter complied with that standard.

## **4. Tortious Interference**

The elements of a tortious interference claim are: (1) a contract or other valid business expectancy; (2) defendant’s knowledge of the expectancy; (3) intentional interference with the expectancy, resulting in the expectancy not being realized; (4) lack of justification; and (5) damages proximately caused by the defendant’s conduct. *Londoff v. Walnut St. Secs., Inc.*, 209 S.W.3d 3, 7 (Mo. App. E.D. 2006). For the reasons stated above, the authorization and release applied to the letter. Our decision on that issue disposes of the “lack of justification” element. Nigro cannot claim that St. Joseph and Davis lacked justification because he authorized the very action of which he complains.

**Opinion by: Karen King Mitchell, Judge**

May 1, 2012

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